

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. After amending the claims as set forth above, claims 14-28 remain now pending in this application.

Entry of the Amendment

The specification has been amended to include subheadings, as is conventional with U.S. practice. Claims 18 and 24 have been amended to correct minor typographical errors. The amendments do not raise new issues that require further search and/or consideration as the scope of the claims remains the same. Thus, entry of the amendment is respectfully requested.

Rejection of claims 14-18 and 21-28 based on Pasch

Claims 14-18 and 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0662901 ("Pasch"). This rejection is traversed for at least the following reasons.

Claim 14 recites "a basic body which is adapted to be transversely mounted between respective sides of a vehicle and which comprises a metal frame member that has at least a partially closed profile cross-section defining a hollow space axially extending along the frame member, said basic body comprising at least two generally straight subsections which are connected via a third subsection of said frame member, wherein said third subsection comprises a generally C-shaped portion of said frame member that forms a widened area for at least partially encircling the HVAC unit." Claim 14 requires a basic body comprising a metal frame member that has at least a partially closed profile cross-section defining a hollow space axially extending along the frame member wherein the basic body comprises at least two generally straight subsections and a third subsection comprising a generally C-shaped portion of the frame member. Pasch does not "identically disclose or describe" or even suggest this combination of features.

At the outset it should be noted that the C-shaped portion of the frame member is a separate requirement from the partially closed profile cross-section. In other words, there is a portion of the basic body that has a partially closed profile cross-section and a C-shape, and not merely a partially closed profile cross-section that is a C-shape.

The PTO apparently asserts that cross-bearer 1 and the instrument panel 17 of Pasch form the crossmember of claim 14, as evidenced by the statements “Pasch teaches an invention as claimed: A cross member 1, 17 (fig. 1)...” and “wherein said third subsection comprises a generally C-shaped portion/L-shaped portion...of said frame member that forms a widened area formed of elements 3 and 17 (fig. 1)” in paragraph 2 of the Office Action. However, the instrument panel 17 of Pasch cannot be considered part of the crossmember of claim 14, at least because there is no teaching or suggestion that the instrument panel is made from metal. Although Pasch states that “[a]ll the parts of the cross-bearer may be formed by light metal extruded sections, which are welded together” (column 2, lines 20-22 of Pasch), there is nothing in Pasch to suggest that this statement extends to the instrument panel 17, which Pasch considered to be an entirely separate element from the cross-bearer 1.

In addition, according to claim 14, the third subsection of frame member is a portion of the frame member, which has at least a partially closed profile cross-section defining a hollow space axially extending along the frame member. Accordingly, the third subsection comprises a generally C-shaped portion that forms a widened area and has at least a partially closed profile cross-section. In contrast, the middle part 3 of Pasch is simply L-shaped, and is not generally C-shaped and does not have a partially closed profile cross-section. The PTO asserts that the L-shaped middle part 3 and the instrument panel 17 form the generally C-shaped portion of said frame member. (See Paragraph 2 of the Office Action.) However, as previously discussed, the instrument panel 17 of Pasch cannot be considered part of the third subsection of the frame member because there is nothing in Pasch to indicate that the instrument panel is made from metal.

Furthermore, even if the instrument panel 17 of Pasch were considered part of the third subsection of claim 14 (and the Applicant maintains that it cannot), the combination of the instrument panel 17 and the L-shaped middle part 3 still cannot be considered the third subsection of claim 14 because the combination of the instrument panel 17/middle part 3 does not have a C-shaped portion, which is a separate requirement from the partially closed profile cross-section. At best, the instrument panel 17 merely partially encloses the cross-bearer 1 (which may be related to the partially closed profile cross-section feature of claim 14), but there is no teaching or suggestion that the instrument panel 17/ middle part 3 has a C-shape, apart from the partially closed profile cross-section.

In addition, even if middle part 3 of Pasch had a C-shaped channel cross-section, this is not what the claim language is defining. The claimed “generally C-shaped portion of said frame member that forms a widened area for at least partially encircling the HVAC unit” defines the C-shaped portion of the frame member (not C-shaped cross-section, but rather a portion in the axial dimension of the frame) that at least partially surrounds or encircles the HVAC unit, i.e., the sides of the “C” at least partially encircle the HVAC unit. This meaning is certainly clear from the drawing figures and description of the present specification. Pasch has no generally C-shaped portion, within the meaning of the claim language.

Because Pasch does not teach or suggest the third subsection of the basic body, claim 14 is not anticipated by Pasch.

Claims 15-18 and 21-28 depend from and contain all the features of claim 14, and are allowable therewith for at least the same reasons as claim 14, without regard to the further patentable features contained therein.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Rejection of claims 19-20 based on Pasch and Mochizuki

Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pasch in view of JP 11-319552 (“Mochizuki”). For at least the following reasons, this rejection is traversed.

Claims 19-20 depend from and contain all the features of claim 14. As previously mentioned, Pasch does not teach or suggest the third subsection of the basic body. Mochizuki does not cure this deficiency. Accordingly, claims 14 and 19-20 are not rendered unpatentable over any combination of Pasch and Mochizuki.

In addition, the combination of Pasch and Mochizuki does not teach or suggest all the features of claims 19-20. Claim 19 requires that the “metal frame member of the basic body is at least partially formed from two metal ducts arranged parallel to each other.” The PTO asserts that Mochizuki teaches a duct 3 with ducts 4 and 5 provided above it, that is it a mere duplication of parts to add a second duct below the duct 3, and that it would have been obvious to include the ducts of Mochizuki placed on both sides of the central duct of Pasch in order to improve formability and mount workability of an air conditioning duct. However, the proposed combination does not teach or suggest that the sides of the cross-bearer 1 of

Pasch are ducts but, at best, merely adds additional ducts to the overall system of Pasch. In other words, merely adding ducts, as proposed by the PTO, does not satisfy the requirement of claim 19, because there is no teaching or suggestion that the side walls of the cross-bearer 1 are themselves ducts. Accordingly, any combination of Pasch and Mochizuki does not teach or suggest all the features of claim 19 or 20, regardless of the appropriateness of the proposed combination.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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